



**INVITATION FOR BID  
For Construction Services  
COS 16-007**

Relating to  
Cactus Road Improvements

Released: 12/24/2015

**Optional Pre- Submission Meeting: 1/12/2016  
Submission Due: 01/21/2016 @4:00:00 PM**

**MAYOR**  
SHARON WOLCOTT

**CITY COUNCIL**

ROLAND F. WINTERS, JR., District 1  
JIM BIUNDO, District 2  
JOHN WILLIAMS, District 3, VICE MAYOR

RACHEL VILLANUEVA, District 4  
SKIP HALL, District 5  
TODD TANDE, District 6

**CITY MANAGER**

BOB WINGENROTH

**PUBLIC WORKS**

MIKE GENT

## **PUBLIC NOTICE**

### **City of Surprise – Public Works Department NOTICE of REQUEST for a BID (COS16-007) CONSTRUCTION - Project #21304**

This project is located in the City of Surprise and Maricopa County. The limits of the improvements are in Cactus Road from 175<sup>th</sup> Avenue to Cotton Lane.

## **SCHEDULE OF BID DEADLINES**

Advertisement:	12/24/2015
Pre-submittal meeting:	1/12/2016; 10:00 AM. City Hall Community Room 16000 N. Civic Center Plaza Surprise, AZ 85374
Deadline to submit questions:	01/15/2016
Bids due:	01/21/2016, 4:00:00 PM (MST)
Anticipated contract award:	01/26/2016
Bids must be delivered to:	Surprise Procurement Division Attention: Kevin Custer City of Surprise City Hall 16000 North Civic Center Plaza Surprise, AZ 85374

**Bids received after the time and date listed above will be considered nonresponsive and will be returned unopened.**

Complete information packets are available for download from the City of Surprise website: <http://surpriseaz.gov/index.aspx?NID=386> or by calling 623-222-3700.

Anyone needing the complete information packet in alternative format or an auxiliary aid, service, or modification of policies or procedures to participate in this Bid should contact: Lynda Davis, ADA Coordinator, 16000 N. Civic Center Plaza, Surprise, AZ 85374, (623) 222-3543, [DAC@surpriseaz.gov](mailto:DAC@surpriseaz.gov)

**CITY OF SURPRISE**

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Kevin Custer

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## **PROJECT OVERVIEW**

The City of Surprise (“**City**”) seeks a qualified Contractor to perform construction services for roadway improvements on Cactus Road.

### **A. Solicitation Schedule**

The following timeline will be observed for this IFB:

#### **SCHEDULE OF BID DEADLINES**

Advertisement:	12/24/2015
Pre-Submittal Meeting	1/12/2016; 10:00 AM. City Hall Community Room 16000 N. Civic Center Plaza Surprise, AZ 85374
Questions Due:	01/15/2016
Bids Due:	01/21/2016, 4:00 PM (MST)
Bid Opening:	01/21/2016, 4:15 PM City Hall; Conference Room CH1 F N1-150 Lobby 16000 N. Civic Center Plaza Surprise, AZ 85374
Notice of Intent to Award:	1/22/2016
Anticipated Contract Award:	1/26/2016

### **B. Project Schedule/Contract Time**

Contractor will have 60 days from the date of the Notice to Proceed under this IFB to complete the Project.

### **C. Project Manager/Contract Administrator.**

Suneel Garg, Civil Engineer, Public Works – Development Engineering, or his Designee.

Bidders may not contact the project manager/contract administrator for any reason. All questions regarding this IFB must be directed to the City of Surprise procurement division as provided below.

### **D. Contractor’s Duties**

1. Contractor assumes the risk for all construction at the Contract Price. Any work not covered by a budget line item must be included in the contingency amount. This is a turnkey project.
2. Roles and responsibilities required of the Contractor include the following:
  - a. Serve as the General Contractor during construction.
  - b. Construct improvements per the approved construction plans and specifications at the Contract Price.

- c. Solicit bids from qualified subcontractors to perform applicable portions of the work.
- d. Coordinate inspections and testing of all work.
- e. Establish, maintain, and update construction schedule, identifying activity sequencing, durations, and milestone dates.
- f. Ensure as-built drawings are current and accurate, coordinating with the design consultant as needed.
- g. Procure all material, equipment, and labor services necessary for the project, including long-lead procurement.
- h. Manage contingency and change requests.
- i. Coordinate with various City of Surprise departments, outside agencies, and City consultants, vendors, and utilities.
- j. Schedule and manage site operations, including traffic control and routing.
- k. Provide all construction surveying and staking for the Project.
- l. Bond and insure construction in accordance with State Law and city requirements.
- m. Acquire all necessary permits (federal, state, and local).
- n. Maintain a safe work site.

## **E. Project Specifications & Incorporated Documents**

The following documents are hereby incorporated into this IFB. Once awarded, this IFB, along with the following documents, will be, collectively, the “**Contract Documents.**” These Contract Documents collectively form the binding agreement between the City and Contractor, and will have the precedential order as listed.

- 1. This IFB
- 2. Definitions Sheet (Exhibit A)
- 3. General Terms (Exhibit B)
- 4. Special Terms (Exhibit C)
- 5. Insurance Requirements (Exhibit D)
- 6. Construction Standards:
  - a. The latest revision of the 2015 Uniform Standard Detail and Specifications published by MAG (or the most current version that has been adopted)
  - b. City of Surprise [Design Engineering Standards](#), August 2012, including latest revision from 2015
- 7. Project Specific Standards:
  - a. Project Drawings and Specifications
    - i. Cactus Road Improvement – Plans
    - ii. Cactus Road Improvement – Special Provisions
- 8. Contractor’s Submission in Response to this IFB

These documents, and any additional supporting documents or detail will be posted on the City of Surprise’s webpage <http://surpriseaz.gov/index.aspx?NID=386>.

## **I. PRE-SUBMITTAL MEETING**

An **Optional** pre-submittal meeting will be held as indicated in the Solicitation Schedule above.

At this meeting, staff from the City of Surprise will discuss the scope of work and general contract issues, and respond to questions from the attendees. The purpose of this meeting will be to clarify the contents of this IFB in order to prevent any misunderstanding of the City's solicitation. Any doubt as to the requirements of this IFB or any apparent omission or discrepancy should be presented to the City. The City will then determine if any action is necessary and may issue a written amendment to the IFB. Oral statements or instructions will not constitute an amendment to this IFB.

The City will not publish any meeting minutes or other information from the Pre-submittal Meeting, except the sign-in sheet.

## **II. SUBMITTAL REQUIREMENTS**

### **A. Generally**

1. Submittals must be clear and concise and organized as indicated below, with all identified sections included. If, in the judgment of the City, a submittal does not conform to the format specified in this IFB, or if any required information is absent or incomplete, the City reserves the right to reject the submittal.
2. All forms contained in this IFB Packet must be completed, included with the submittal, and delivered in a sealed envelope. It is permissible to copy these forms if required. Faxed or e-mailed bids will not be considered.
3. The Offer and Acceptance form must be submitted with an original ink signature by a person authorized to sign the offer.
4. Erasures, interlineations, or other modifications in the bid must be initialed in original ink by the authorized person signing the Offer.
5. No bid may be altered, amended, or withdrawn after the specified bid due date and time.
6. Periods of time, stated as a number of days, will be calendar days.
7. The prevailing clock for purposes of determining when a bid is submitted will be the City Procurement Manager's clock.
8. It is the responsibility of all bidders to examine the entire IFB Packet and seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after bid due date and time.
9. Questions regarding this IFB must be submitted in writing by fax or email to:

If by Email:

To: [Purchasing@surpriseaz.gov](mailto:Purchasing@surpriseaz.gov)

If by Fax:

To: 623-222-1301

Re: IFB COS16-007

ATTN: Procurement

Re: IFB COS16-007

Verbal inquiries, in person or by telephone, will not be answered. Any questions or requests for clarification must be received by FAX or e-mail no later than the **date listed in the Submittal Schedule**. Inquiries may not be directed to the City department for which this project is being procured. Any correspondence related to an IFB should refer to the appropriate IFB number, page, and paragraph number. Bidders may not submit inquiries in a mailed envelope because such an envelope may be identified as a sealed bid and will not be opened until after the official Invitation For Bid due date and time.

10. Late bids will not be considered. A bidder submitting a late bid will be so notified.
11. The City may elect to amend the IFB after initial publication. Receipt of a Solicitation Amendment must be acknowledged by signing and returning the document before the specified due date and time.
12. All bidders must have a completed vendor registration with the City of Surprise Procurement Department.
13. Firms who pick up a hard copy packet copy of the IFB from the procurement division and those who attend the pre-submittal meeting will be included on the IFB holders list. Firms receiving a copy of this packet through any other means (including via download from the City's webpage) must register as an IFB holder at the City of Surprise Procurement Office, 16000 N. Civic Center Plaza Surprise, Arizona 85374 or call **(623) 222-3700** or email [purchasing@surpriseaz.gov](mailto:purchasing@surpriseaz.gov) to register.
14. Bonds submitted as part of a response to this IFB must be duly executed by the Contractor, having as surety thereon a surety company approved by the City and holding a Certificate of Authority to transact surety business in the State of Arizona, by the Arizona Department of Insurance. A copy of the Certificate of Authority must accompany the bonds. The Certificate must have been issued or updated within two (2) years prior to the award of the contract. No individual sureties are acceptable. All bonds must be provided by a surety with an A.M. Best's Key Rating Guide rating of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company, payable without condition to the City.
15. Bidders may not take advantage of any apparent error or omission in the plans, bid schedule items, estimated quantities, specifications, or other contract documents. In the event the bidder discovers such an error or omission, the bidder must immediately notify the City. The City will then make such corrections and interpretations as may be deemed necessary.
16. In order to allow for an adequate evaluation, the City requires an offer in response to this Solicitation to be valid and irrevocable for 120 days after the opening time and date.
17. In the event of a conflict between the language of this IFB (including all incorporated documents) and a bidder's submittal, the IFB language will prevail. In addition, bids that contain terms that are contradictory to the language in this IFB may be deemed nonresponsive and ineligible for contract award at the City's discretion.

## **B. Compliance with Arizona Revised Statutes (A.R.S.)**

1. Procurement of the services under this IFB is governed by A.R.S. Title 34. By responding to this solicitation, the bidder certifies that the submittal and bidder's conduct in relation to this solicitation is in compliance with the requirements of A.R.S. Title 34.
2. All firms interested in this project (including the firm's employees, representatives, agents, lobbyists, attorneys, and sub-consultant firms) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public and to protect the integrity of the selection process. All contact on this selection process must be addressed to the authorized representative identified in Section III A(9).

## **C. Waivers, Disclaimers, Limitations**

1. The City reserves the right to reject any or all submissions, to waive any informality or irregularity in any solicitation received, and to be the sole judge of the merits of the respective solicitation received. The City also reserves the right to re-advertise, modify, or cancel the Project in its entirety, at its sole discretion. No binding contract will exist between the bidder and the City until the City accepts the bidder's offer by signing the Offer and Acceptance form.
2. The City reserves the right to engage the services of others as may be required for successful completion of the project.
3. The City reserves the right to request substitution of subcontractors or to request the addition of specialty subcontractors that may enhance the Project.
4. The City will not reimburse the cost of developing, presenting, or submitting any response to this solicitation.

## **D. Submittal Delivery**

Submittals must be received by the Bid Due date indicated in the Submittal Schedule and must be in a sealed package marked with the solicitation title and reference number, along with the identity of the firm making the submission. The submittal must be delivered to the following address:

Surprise Procurement Division  
Attention: Kevin Custer  
City of Surprise City Hall  
16000 North Civic Center Plaza  
Surprise, AZ 85374



Submittals received after the due date and time, or labeled inconsistent with the above will not be accepted and will be returned to the submitting party unopened. No faxed or electronic submittals will be considered.

#### **E. Organization and Format**

1. All submissions are required to follow the same format. Each submission must include the following in the order indicated below. Referenced forms are contained in the IFB Construction Packet and are available online at <http://surpriseaz.gov/index.aspx?NID=386> or by calling 623-222-3700.
  - a. Offer Form
  - b. Experience Summary & Key Personnel Form
  - c. Organizational Chart
  - d. Schedule of Values Form
  - e. Executed Affidavit of Non-Collusion
  - f. Executed Immigration Warranty
  - g. Executed Certificate of Insurability
  - h. Executed Bonds
2. Submissions must be made using 8 ½" x 11" paper, using Arial font no smaller than 12 point and printed using single side.
3. The submission must include **one** signed original and **one** copy.

#### **F. Protests**

Firms wishing to protest a disqualification or a procurement outcome may file a protest pursuant to the Arizona Administrative Code, Sections R2-7-A901 through A911. Protests must be filed either within 14 days of the Notice of Intent to Award or 10 days after the procurement file is made available for public inspection, whichever is later.

### **III. BID EVALUATION AND AWARD**

Award(s) will be made to the lowest responsible and responsive bidder.

A responsive bidder is a bidder who has submitted a bid that conforms in all material respects to the requirements of this IFB.

A responsible bidder is a bidder who:

- (a) Has the ability, capacity, experience, and skill to complete the Work in accordance with bid specifications;
- (b) Has the ability to complete the Work promptly, or within the time specified, without delay or interference;
- (c) Has the equipment, facilities and resources of such capacity and location to enable the bidder to complete the work;
- (d) Is able to provide future maintenance, repair, parts, and service for the use of the goods purchased, when applicable;
- (e) Has the quality and adaptability of the materials, supplies, or services required or necessary to the particular use; and

- (f) Possesses the financial resources to perform the Work.

Bids that are timely received will be publicly opened at the time and place indicated in the Submission Schedule. The lowest-priced bid submitted by a responsive and responsible bidder will be chosen for contract award.

Unless otherwise stated in the submission or in this IFB, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City.

Notwithstanding any other provision of this IFB, the City expressly reserves the right to:

1. Waive any immaterial defect or informality: or
2. Reject any or all bids, or portions thereof, or
3. Reissue an invitation for bid.

#### **IV. OFFER AND ACCEPTANCE**

By submitting a signed offer, bidders are agreeing to comply with all the terms and conditions set forth in this IFB, along with all attachments, incorporated documents, and the Offer. Upon acceptance of the Offer by the City, these documents form the contract between the Bidder/Contractor and the City, and will be known collectively as the “**Contract Documents.**”



## Invitation for Bid Offer and Acceptance

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

### OFFER

The undersigned hereby certifies on behalf of the named entity that:

- o Reasonable diligence has been exercised in the preparation of this submission;
- o All contents are true, accurate, and complete to the best of the signer's knowledge;
- o The undersigned has the authority to make this Offer and to bind the entity named below; and
- o No exceptions to the IFB are taken (*Note, exceptions taken will render the submission nonresponsive*).

The undersigned further certifies that the entity named below   IS   or   IS NOT   currently debarred, suspended, or proposed for debarment by any governmental entity. The undersigned agrees to notify the City of any change in this status, should one occur, before the time an award has been made under this invitation for bid.

The undersigned, on behalf of the entity named below, hereby offers to furnish materials and/or services as set forth in this Offer, in compliance with all terms, conditions, specifications in and amendments to the Invitation for Bid COS16-007. By making this offer, the entity will be contractually bound to provide these goods and services if the offer is accepted by the City.

Firm Name:	
Street Address:	
City, St. Zip:	
ROC Contractor's License # License Holder's Name:	
Surprise Business License #	

Telephone:	
Fax:	
Email:	
Signature for Offer	(date)
Name and Title:	

### ACCEPTANCE OF OFFER AND CONTRACT AWARD (For City of Surprise Use Only)

Your offer is hereby accepted. You are now bound to provide the services described in the Contract Documents.

Attested by:

\_\_\_\_\_  
Sherry Aguilar, City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney's Office

City of Surprise, Arizona.    Effective Date: \_\_\_\_\_

\_\_\_\_\_  
Dana Garr, PROCUREMENT MANAGER

Awarded on: \_\_\_\_\_

\_\_\_\_\_  
City Manager



## Experience Summary And Key Personnel

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

### **Experience and Key Personnel**

**Firm's Experience and Qualifications:** Briefly describe previous experience on similar projects. Attach additional sheet as necessary.

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**References:** Please list a minimum of 3 references for similar jobs and timelines whom we may contact.

Company \_\_\_\_\_ Contact name \_\_\_\_\_  
Address \_\_\_\_\_  
Email/Phone \_\_\_\_\_ Project Budget \_\_\_\_\_

Company \_\_\_\_\_ Contact name \_\_\_\_\_  
Address \_\_\_\_\_  
Email/Phone \_\_\_\_\_ Project Budget \_\_\_\_\_

Company \_\_\_\_\_ Contact name \_\_\_\_\_  
Address \_\_\_\_\_  
Email/Phone \_\_\_\_\_ Project Budget \_\_\_\_\_

**Identify Key Personnel:** It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. Please list all key personnel who will be assigned to complete the work under this contract. Attach additional sheets as necessary.

Name \_\_\_\_\_ Title \_\_\_\_\_  
Experience \_\_\_\_\_  
\_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_  
Experience \_\_\_\_\_  
\_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_  
Experience \_\_\_\_\_  
\_\_\_\_\_



## Schedule of Values

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

### Schedule of Values

See Attachment A



## Affidavit of Non-Collusion

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

### Affidavit of Non-Collusion

COS16-007 – Cactus Road Improvements

State of Arizona       )  
                                  )ss.  
County of Maricopa    )

\_\_\_\_\_  
(Affiant/Name of person signing this affidavit)

the \_\_\_\_\_  
(Title)

of \_\_\_\_\_  
(Contractor/Bidder)

declares under oath:

I am authorized to submit the enclosed bid. The bid is genuine and not a sham or collusive, nor made in the interest of any other person or entity. Bidder has not, directly or indirectly, entered into any agreement whereby different bidders on any project for the City agree either as to who is to be the low bidder, or as to the amount of any bid or any part of any bid, or otherwise taken any action in restraint of free and competitive bidding. Bidder has not disclosed its sealed bid amount to any other bidder, person, firm or corporation in the same business doing business in this State, or known to the person disclosing the figures to be likely to submit a bid for the same project before the bids are opened. All statements contained in the bid and in this affidavit are true and correct.

\_\_\_\_\_  
(Signature of Affiant)

SWORN TO BEFORE me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the County of

Maricopa, State of Arizona, by

\_\_\_\_\_  
Notary Public

My Commission Expires:



## Immigration Warranty

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

### Immigration Warranty

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. §23-214 related to the immigration status of its employees.

By completing and signing this form the contractor attests that it and all subcontractors performing work under the cited contract meet all conditions contained in this Immigration Warranty.

<b>Contract Number:</b>	<b>COS16-007</b>		
<b>Name (as listed in the Offer):</b>			
<b>Street Address:</b>			
<b>City:</b>	<b>State:</b>	<b>Zip Code:</b>	

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title:**

\_\_\_\_\_  
**Date (month/day/year)**



## **Certificate of Insurability**

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

### **Certificate of Insurability**

I hereby certify that I am fully aware of Insurance Requirements contained in the Contract Documents for solicitation number COS16-007 and by the submission of this Offer I hereby assure the City that I am able to produce the insurance coverage required if I am awarded the Contract.

If I am awarded the Contract and then become unable to produce the insurance coverage specified within ten working days, I am fully aware and understand that this will make my submission nonresponsive and I will be disqualified for this project and future projects for the City of Surprise.

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**Signature**

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**Printed Name**

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**Title:**

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**Date (month/day/year)**





**Bid Bond**  
**(A.R.S. Titles 28, 34, and 41)**

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

**Bid Bond**

PRINCIPAL (Legal Name and business Address)
SURETY (Name and Business Address)
PENAL SUM OF BOND (Must be 10% of the bid amount)
PROJECT: COS16-007 Cactus Road Improvements

We, the Principal, and Surety, a corporation holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, are held and firmly bound unto the City of Surprise, (hereinafter "Obligee") in the amount of Ten Percent (10%) of the amount of the bid of Principal, submitted by Principal to the Obligee for the work described above, for the payment of which sum, the Principal and the Surety bind themselves, and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for the Project described above.

NOW, THEREFORE, if the Obligee accepts the proposal of the Principal and the Principal enters into a contract with the Obligee in accordance with the terms of the proposal and gives the bonds and certificates of insurance as specified in the standard specifications with good and sufficient surety for the faithful performance of the contract and for the prompt payment of labor and materials furnished in the prosecution of the contract, or in the event of the failure of the Principal to enter into the contract and give the bonds and certificates of insurance, if the Principal pays to the Obligee the difference not to exceed the penalty of the bond between the amount specified in the proposal and any larger amount for which the Obligee may contract in good faith with another party to perform the work covered by the proposal, this obligation is void. Otherwise it remains in full force and effect. Provided, however, that this bond is executed pursuant to section 34-608, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of the section to the extent as if it were copied at length in this agreement.

Witness this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
SURETY SEAL

By: \_\_\_\_\_

By: \_\_\_\_\_



**Performance Bond**  
**(A.R.S. Title 34, Chp. 2, Art. 2)**

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

**Performance Bond**

PRINCIPAL (Legal Name and business Address)	PENAL SUM OF BOND (Must be 100% of the contract amount)
SURETY (Name and Business Address)	PROJECT COS16-007 Cactus Road Improvements

We, the Principal, and Surety, a corporation holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, are held and firmly bound unto the City of Surprise, in the amount of the Penal Sum of Bond indicated above, for the payment of which sum, the Principal and the Surety bind themselves, and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the City of Surprise for the Project named above, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is that if the principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice to the surety, and during the life of any guaranty required under the contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect. Provided, however, that this bond is executed pursuant to title 34, chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with title 34, chapter 6, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement. The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by the court. The performance under this bond is limited to the construction to be performed under the contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

Witness this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
SEAL

By: \_\_\_\_\_

By: \_\_\_\_\_



**Payment Bond**  
**(A.R.S. Titles 28, 34, and 41)**

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

**Payment Bond**

PRINCIPAL (Legal Name and business Address)	PENAL SUM OF BOND (Must be 100% of the contract amount)
SURETY (Name and Business Address)	PROJECT COS16-007 Cactus Road Improvements

We, the Principal, and Surety, a corporation holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, are held and firmly bound unto the City of Surprise, (hereinafter "Obligee") in the amount of the Penal Sum of Bond indicated above, for the payment of which sum, the Principal and the Surety bind themselves, and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the City of Surprise for the Project named above, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in said contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
SEAL

By: \_\_\_\_\_

By: \_\_\_\_\_



## City of Surprise Definition Sheet (Construction)

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

### **Definition Sheet**

The following defined terms are in addition to any terms that may be defined within the body of the Agreement or Exhibits other than this Definition Sheet.

**Change Order** – A written instrument issued after execution of the Agreement signed by City and Contractor, stating their agreement upon all of the following: the addition, deletion, or revision in the scope of services or deliverables; the amount of the adjustment to the Contract Price; the extent of the adjustment to the Contract Time; or modifications of other contract terms. The Contract Price and the Contract Time may be changed only by Change Order.

**Contract Time** – The time or interval of time set forth in the Project Schedule for the completion of the Project.

**Critical Path Method (CPM)** – A scheduling technique which identifies the logical sequence of the activities occurring in a construction project, the anticipated time required to complete each activity in the project, and the activities that must be completed on schedule to finish the project within the anticipated time. Typically, activities are arranged in a network that shows both activities and their dependencies. CPM is also used as a management technique which enables contracting parties to predict when activities may occur so that resources can be effectively used and limitations can be identified.

**Design Professional** – The qualified, licensed person, firm, or corporation retained by the City who furnishes design services related to the Project. Design services include, among other items, the development of Drawings and Specifications and review of Contractor submittals.

**Deliverables** – The work products prepared by the Contractor under the terms of the Agreement.

**Differing Site Conditions** – Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents, or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work at the general area of the Site. Caliche, rock, hard-digging or sandy/silty soil encountered on a project is not considered a “Differing Site Condition.”

**Drawings** – Documents that visually represent the scope, extent, and/or character of the Work to be furnished and performed by Contractor during the construction phase and which have been prepared or approved by the Design Professional and City. These documents include Drawings that have reached a sufficient state of completion and released by Design Professional solely for the purposes of review and/or use in performing constructability or bid-ability reviews by Contractor and in preparing cost



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estimates (e.g. Master Planning and Programming, Schematic Design, Design Development, and Construction Drawings), but *"not for construction."* Shop Drawings are not Drawings as so defined.

Legal Requirements – Any and all applicable laws, rules, regulations, ordinances, codes, and orders applicable to the Project of any and all governmental bodies, agencies, authorities, and courts having jurisdiction, and any applicable provisions of any agreement that runs with the land.

MAG Specifications and Standard Details – The latest revision of the 2015 edition (or later adopted versions) of the Uniform Standard Specifications for Public Works Construction, and Uniform Standard Details as published by the Maricopa Association of Governments (MAG).

Notice to Proceed (NTP) – A written notice given by City to Contractor fixing the date on which Contractor will start to perform Contractor's obligations under the Contract.

Project – The project specified in the Agreement.

Project Budget – The total amount the City anticipates spending on the Project at its inception.

Project Team – The Design Professional, the Contractor, the Contract Administrator/Project Manager, the City's representatives and other stakeholders who are responsible for making decisions regarding the Project.

Site – The land or premises on which the Project is located.

Specifications – The technical descriptions of materials, equipment, construction systems, and standards of workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor – An individual, or firm, having a direct contract with Contractor or any other individual, or firm, having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the Work at the site for which Contractor is responsible.

Supplier – A manufacturer, fabricator, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

Work – The entire completion of construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources, and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.



## City of Surprise General Terms

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### **General Terms**

- A. Independent Contractor.** The Contractor acknowledges that all services provided under the Agreement are being provided as an independent contractor, not as an employee or agent of the City. Both parties agree that the Agreement is nonexclusive and that Contractor is not prohibited from entering into other contracts nor prohibited from practicing his or her profession elsewhere. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party will not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued under the Agreement and that the Contractor should make arrangements to directly pay such expenses, if any. The City will not provide the Contractor with health insurance, life insurance, workmen's compensation, sick leave, vacation leave, or any other fringe benefits. Any fringe benefits will be the sole responsibility of Contractor.
- B. Subcontracts.** No subcontract will be entered into by Contractor with any other party to furnish any of the material or work specified in the Agreement without the advanced written approval of the City. Contractor will itemize all subcontractors that will be utilized on the project. Any substitution of subcontractors by Contractor must be first approved by the City and any cost savings will be passed to the City. All subcontracts must include all the terms and conditions of the Agreement which will apply with equal force to the subcontract as if the subcontractor were the Contractor referred to in the Agreement. Contractor agrees that it is as fully responsible to City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by Contractor.
- C. Successors and Assigns.** The Agreement will extend to and be binding upon the Contractor, its successors, and assigns, including any individual, company, partnership, or other entity with or into which the Contractor will merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the Contractor will sell its assets. No right covered by the Agreement will be assigned in whole or in part without first obtaining the written consent of the City. In no event will any contractual relationship be created or be construed to be created as between any third party and the City.
- D. Third Party Beneficiaries.** All duties and responsibilities undertaken in compliance with the Agreement are for the sole and exclusive benefit of the City and the Contractor and not for the benefit of any other party.





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**E. Indemnity.** To the fullest extent permitted by law, the Contractor, its successors, assigns, and guarantors, will defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials, and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligence, recklessness, or intentional wrongful conduct to the extent caused by the Contractor performing work or services under the Agreement, including but not limited to, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages by any of the Contractor employees. Insurance provisions included in the Agreement are separate and independent from the indemnity provisions of this Section and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this Section will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

**F. Conflict of Interest.** To evaluate and avoid potential conflicts of interest, the Contractor will provide written notice to the City of any work or services performed by the Contractor for third parties that may involve or be associated with any real property or personal property owned or leased by the City. This notice will be given 7 business days before the start of work under the Agreement by the Contractor for a third party or 7 business days before an adverse action. Adverse action, for purposes of this Section, means:

- i. Using data as defined in the Agreement acquired in connection with the Agreement to assist a third party in pursuing administrative or judicial action against the City;
- ii. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
- iii. Using data to produce income for the Contractor or its employees independently of performing the services under the Agreement, without first obtaining the written consent of the City.

The Contractor represents that except for those persons, entities and projects identified to the City, the services to be performed by the Contractor under the Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City. The



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Contractor's failure to provide a written notice and disclosure of the information as stated in this Section will constitute a material breach of the Agreement.

**G. Licenses.** Contractor will maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to the Agreement.

**H. Compliance with Applicable Laws.** Contractor must, at all times, observe and comply with all applicable laws, ordinances, regulations, codes, orders, and decrees. Specifically, but without limitation, this includes all Occupational Safety and Health Administration ("OSHA") laws and regulations, the Fair Labor Standards Act ("FLSA"), the American with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989. The Contractor also agrees to comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees". **Under the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors will comply with all Federal immigration laws and regulations that relate to their employees and that the Contractor and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).** A breach of this warranty by the Contractor or any of its subcontractors will be considered a material breach of the Agreement and may subject the Contractor or subcontractor to penalties up to and including termination of the Agreement or any subcontract. The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty. The Contractor agrees to indemnify, defend, and hold the City harmless for, from, and against all losses and liabilities arising from any and all violations of these statutes.

The provisions of this Section must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under the Agreement or any subcontract.

**I. Compliance with A.R.S. §38-511.** The City may cancel the Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the City or any of its departments or agencies, is at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Contract.





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**J. Ownership of Project Documents.** All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original drawings, Computer Aided Drafting and Design (CADD) files, and other related documents which are prepared in the performance of the Agreement (collectively referred to as "**Project Documents**") are to be and remain the property of the City and are to be delivered to the City before the final payment is made to the Contractor. But in the event these Project Documents are altered, modified, or adapted without the written consent of the Contractor, which consent the Contractor will not unreasonably withhold, the City agrees to hold the Contractor harmless from the legal liability arising out of or resulting from the City's alteration, modification or adaptation of Contractor's work under the Agreement Documents to the extent permitted by law.

### **K. Intellectual Property Rights; Indemnity**

1. The copyrights, patents, trade secrets, or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes, or works of authorship developed or created by the Contractor, its subcontractors or personnel, during the course of performing the Agreement, or arising out of Contractor's work under the Agreement, will belong to the Contractor.
2. The Contractor grants, and will require its subcontractors to grant a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate Contractor's work under the Agreement, or deliverables developed or created for Contractor's work under the Agreement. This license will also include the making of derivative works.
3. The Contractor will pay all royalties and license fees associated with its performance under the Agreement.
4. The Contractor will defend any action or proceeding brought against the City based on any claim that Contractor's work under the Agreement, or any part of it, or the operation or use of Contractor's work under the Agreement or any part of it, constitutes infringement of any United States patent or copyright, issued now or at some later date. The City will give prompt written notice to the Contractor of any action or proceeding and will reasonably provide authority, information, and assistance in the defense of the action. The Contractor will defend, indemnify, and hold harmless the City from and against all damages, expenses, losses, royalties, profits, and costs, including but not limited to attorneys' fees and expenses awarded against the City or the Contractor in any action or proceeding.



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The Contractor agrees to keep the City informed of all developments in the defense of the actions. The City may be represented by and actively participate through its own counsel in any suit or proceedings if it so desires.

5. If the City is enjoined from the operation or use of all or any part of Contractor's work under the Agreement as the result of any patent or copyright suit, claim, or proceeding, the Contractor will at its sole expense take reasonable steps to procure the right to operate or use Contractor's work under the Agreement. If the Contractor cannot procure this right within a reasonable time, the Contractor will promptly, at the Contractor's option and at the Contractor's expense, (a) modify Contractor's work under the Agreement so as to avoid infringement of any patent or copyright or (b) replace Contractor's work under the Agreement with work that does not infringe or violate any patent or copyright.
6. Contractor's obligations to defend and indemnify under this section will not arise out of any suit, claim or proceeding based on infringement or violation of a patent or copyright (a) relating solely to a particular process or product of a particular manufacturer specified by the City and not offered or recommended by the Contractor to the City or (b) arising from modifications to Contractor's work under the Agreement by the City or its agents after acceptance.

### **L. Financial Record Keeping and City's Audit Right**

1. Contractor's records for all contracts between City and Contractor will, upon reasonable notice, be open to inspection and subject to audit, scanning, and/or reproduction during normal business hours. Such audits may be performed by any City's representative or any outside representative engaged by City for the purpose of examining such records. City or its designee may conduct such audits or inspections throughout the term of the Agreement and for a period of three years thereafter.
2. City's representatives may, without limitation, conduct verifications such as counting employees at the work site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.
3. Contractor's "records" include any and all information, materials and data of every kind and character, including without limitation, records, books,



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papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in City's judgment have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by the Agreement. Such records include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back-charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to City or Contractor's work under the Agreement in connection with Contractor's dealings with City to the extent necessary to adequately permit evaluation and verification.

4. Contractor must require all payees (examples of payees include subcontractors, suppliers, insurance carriers, etc.) to comply with the provisions of this Section by including the requirements hereof in a written contract between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this Section included in their contracts with Contractor.
5. City's authorized representative(s) will have reasonable access to Contractor's facilities, will be allowed to interview all current or former employees to discuss matters pertinent to the performance of the Agreement and will be provided adequate and appropriate work space, in order to conduct audits in compliance with this Section.
6. If an audit inspection or examination in accordance with this Section, discloses overpricing or overcharges to City (of any nature) by Contractor and/or Contractor's subcontractors in excess of \$50,000, then, in addition to making adjustments for the overcharges, the reasonable actual cost of City's audit must be reimbursed to City by Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Contractor's invoices and/or records must be made within a



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reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Contractor.

### **M. Termination.**

1. The City and the Contractor agree to the full performance of the covenants contained in the Agreement, except that the City reserves the right, at its sole discretion and convenience, and without cause, to terminate any or all services provided for in the Agreement, or abandon any portion of Contractor's work under the Agreement.
2. Contractor understands that the continuation of the Agreement at any time, but especially after the close of the City's fiscal year that ends on June 30, will be subject to the City's budget providing for the Contract item as an expenditure. The City cannot assure that the budget item for funding the Agreement will be approved in the future; as such assurance would be a legislative and policy determination of the City Council. Should the funding of the Contract not be approved by City Council, City may terminate the Agreement. City represents that it intends to pay all monies due, if such funds have been legally appropriated.
3. The City reserves the right, upon notice, to terminate the Agreement in the event of "Default". Default, for purposes of this Section means:
  - i. The Contractor provides material that does not meet the specifications of the Contract;
  - ii. The Contractor fails to adequately perform the services set forth in the Contract;
  - iii. The Contractor fails to complete the work required or to furnish the materials required within the time stipulated in the Contract;
  - iv. The Contractor fails to make progress in the performance of the Agreement or gives the City reason to believe that the Contractor will not or cannot perform to the requirements of the Contract.
4. Upon notice of Default, the Contractor will have thirty (30) days to cure the Default, or otherwise provide a satisfactory response to the City. Unsatisfactory performance despite a reasonable opportunity to cure, as judged by the City, and failure to provide the City, upon request, with adequate assurances of future performance will all be causes allowing the City to terminate the Agreement for cause. In the event of cancellation for



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cause, the City will not be liable to the Contractor for any amount, and the Contractor will be liable to the City for any and all damages sustained by reason of the default, which gave rise to the cancellation.

5. If the City improperly terminates the Agreement because of a default, the termination for cause will be converted to a termination for convenience in accordance with subsection (a).
6. Upon termination, Contractor will:
7. immediately stop all work, and will immediately cause any of its suppliers and subcontractors to cease work;
8. promptly deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, reports, estimates and other work or deliverables entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied or already paid for by the City; and
9. appraise Contractor's completed work under the Agreement and submit an appraisal to the City for evaluation. The City will have the right to inspect the Contractor's work or deliverables to appraise Contractor's work under the Agreement for completeness.

### **N. Payment In the Event of Termination or Cancellation.**

1. The Contractor will receive compensation in full for services satisfactorily performed to the date of termination or cancellation. The fee will be paid in accordance with the Agreement, and will be an amount mutually agreed upon by the Contractor and the City. In no event will the fee exceed the total contract price. The City will make the final payment within 60 calendar days after the Contractor has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

If Contractor fails to fulfill in a timely and proper manner its obligations under the Agreement, or if the Contractor violates any of the covenants, promises, or stipulations of the Agreement, the City may withhold any payments to the Contractor for the purpose of setoff until the exact amount of damages due the City from the Contractor is determined by the parties or by a court of competent jurisdiction.



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2. In case of default, the City reserves the right to purchase materials or to complete the required work. The City may recover any excess costs from the Contractor by:
  - i. Deduction from an unpaid balance;
  - ii. Collection against the proposal and/or performance bond; or
  - iii. Any combination of the above or any other remedies as provided by law.
3. The Contractor will not be paid for any work done after receipt of the notice of termination, nor will the Contractor be paid for any costs incurred by the Contractor's suppliers or subcontractors which the Contractor could reasonably have avoided.

### **O. Miscellaneous.**

1. Cooperation and Further Documentation. The Contractor agrees to provide the City any other properly executed documents as may be reasonably requested by the City to implement the intent of the Agreement.
2. Integration. The Agreement constitutes the entire understanding of the parties and no representations or contracts, oral or written, made before its execution will vary or modify its terms.
3. Jurisdiction. The Agreement will be considered to be made under, and will be construed in accordance with and governed by, the laws of the State of Arizona without regard to the conflicts or choice of law provisions. An action to enforce any provision of the Agreement or to obtain any remedy will be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of that Court.
4. Modification. Any amendment, modification, or variation from the terms of the Agreement must be in writing and will be effective only after approval of all parties signing the original Agreement. Any attempt at oral modification of the Agreement will be void and of no effect.
5. Notices. Unless otherwise provided in the Agreement, all notices required by the Agreement, or any exhibit of the Agreement, must be in writing and will be considered to have been properly given and received either; (1) on





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the date of service if personally served on the party to whom notice is to be given, or (2) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed to the person to whom notice is to be given. Unless otherwise specified in the Agreement, notice must be given to the party Representative identified in the Agreement.

**Notice by facsimile or electronic means (e-mail or text) will not be considered adequate notice as required in the Agreement.**

6. Headings. The headings used in the Agreement, or any exhibit or incorporated document, are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.
7. Provisions Required By Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will be physically amended to make such insertion or correction.
8. Severability. If any term or provision of the Agreement is found to be illegal or unenforceable, then despite this illegality or unenforceability, the Agreement will remain in full force and effect and the term or provision will be considered to be deleted.
9. Rights and Remedies. No provision in the Agreement will be construed, expressly or by implication, as waiver by the City of any existing or future right or remedy available by law in the event of any claim of default or breach of contract. The failure of the City to insist upon the strict performance of any term or condition of the Agreement or to exercise or delay the exercise of any right or remedy provided in the Agreement, or by law, or the City's acceptance of and payment for materials or services will not release the Contractor from any responsibilities or obligations imposed by the Agreement or by law, and will not be deemed a waiver of any right of the City to insist upon the strict performance of the Agreement.
10. Non-Waiver Provision. The failure of either party to enforce any of the provisions of the Agreement or to require performance by the other party of any of the provisions of the Agreement will not be construed to be a waiver of these provisions, nor will it affect the validity of the Agreement or any part of it, or the right of either party to enforce each and every provision.



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11. Disputes. In any unresolved dispute arising out of an interpretation of the Agreement or the duties required under the Agreement, the final determination at the administrative level will be made by the City.
12. Attorney's Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of the Agreement, or on account of any breach of default, the prevailing party will be entitled to receive from the other party reasonable attorney's fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not the action is prosecuted to judgment.
13. Force Majeure. Except for payment for sums due, neither party will be liable to the other, nor deemed in default under the Agreement, if and to the extent that such party's performance of the Agreement is prevented or delayed by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; acts of terror; hate crimes affecting public order; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts; failures or refusals to act by a government authority; events or obstacles resulting from a governmental authority's response to the foregoing; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

If either party is delayed at any time in the progress of the work by force majeure, then the delayed party will notify the other party in writing of the delay within forty-eight (48) hours commencement thereof and will specify the causes of the delay. Such notice will be hand delivered or mailed *Certified-Return Receipt* and will make a specific reference to this Section, thereby invoking its provisions. The force majeure will be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and will be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with the Agreement. The time of completion will be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with the Agreement. Force majeure will not include: (a) late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences, or (b) late





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performance by a subcontractor, unless the delay arises out of a force majeure occurrence in accordance with this Section.

14. Survival. All warranties, representations and indemnifications by the Contractor will survive the completion or termination of the Agreement.
15. Cooperative Purchasing. Any contract resulting from this solicitation will be for the use of the City of Surprise. In addition, specific eligible political subdivisions and nonprofit educational or public health institutions may also participate at their discretion. In order to participate in any resultant contract, a political subdivision or nonprofit educational or public health institution must have been invited to participate in this specific solicitation and the contractor must be in agreement with the cooperative transaction. In addition to cooperative purchasing, any eligible agency may elect to participate (piggyback) on any resultant contract. The eligible political subdivision, nonprofit educational institution, or public health institution and the Contractor must be in agreement.

Any orders under this section placed to the Contractor will be placed by the agencies participating in this purchase. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The City will not be responsible for any disputes arising out of transactions made by others.



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### **Special Terms**

#### **1. General.**

- A. Contractor agrees, at its own cost and expense, to do all work necessary and required to fully, timely, and properly complete the construction of the Project in strict accordance with the Contract Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever.
- B. Contractor will provide all of the labor and materials, and perform the Work in accordance the Contract Documents.
- C. At all times relevant to the agreement and performance of the Work, the Contractor must fully comply with all Legal Requirements applicable to City, the Project, and the Contract Documents.
- D. Contractor will perform the Work in accordance with the Contract Documents to the satisfaction of City, exercising the degree of professional care, skill, diligence, quality, and judgment that a general contractor engaged, experienced and specializing in construction of facilities of similar scope, function, size, quality, complexity, and detail in urban areas throughout the United States comparable to Surprise, Arizona would exercise at such time, under similar conditions. Contractor must, at all times, perform the Work in conformance with sound and generally accepted principles and practices in the field applicable to general contractor.
- E. Contractor must comply with, and require all Subcontractors to comply with, the Arizona Contractors' license laws, including all requirements with respect to being duly registered and licensed.
- F. Contractor will perform the Work using only those firms, team members, and individuals designated by Contractor consistent with the Contract Documents. No other entities or individuals may be used without prior written approval of the City.

#### **2. Performance of the Work (Field Measurements/Subcontractors/Suppliers).**

- A. Unless otherwise specifically provided in the Contract Documents, Contractor must provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment,



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- machinery, temporary utilities, and other temporary facilities to permit Contractor to complete the Work consistent with the Contract Documents.
- B. Contractor must perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents.
  - C. Contractor's superintendent or designee must be present at the Site at all times when any Work under this agreement is taking place.
  - D. All elements of the Work will be under the direct supervision of a foreman or his designated representative on the Site who will have the authority to take actions required to properly carry out that particular element of the Work.
  - E. In the event of any noncompliance with this Section, City may require Contractor to stop or suspend the Work in whole or in part.
  - F. Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.
  - G. Before starting the Work, Contractor will carefully study and compare the various plans, drawings, other Contract Documents, and Specifications relative to that portion of the Work, as well as the information furnished by City, will take field measurements of any existing conditions related to that portion of the Work, and will observe any conditions at the site affecting it. The exactness of grades, elevations, dimensions, soil conditions, or locations given on any Drawings, or the work installed by other contractors, is not guaranteed by City.
  - H. Before ordering materials or doing work, Contractor and each Subcontractor will verify measurements at the Site and will be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the Contract Documents, including the drawings.
  - I. If Contractor observes errors, discrepancies, or omissions in the Contract Documents, Contractor must promptly notify City and request clarification. If Contractor, with the exercise of reasonable care, should have recognized such error, inconsistency, omission, or difference and fails to report it to City, and if Contractor proceeds with the Work affected by such



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observed errors, discrepancies, or omissions without receiving such clarifications, it does so at its own risk.

- J. In all cases of interconnection of its Work with existing or other work, Contractor will verify at the Site all dimensions relating to such existing or other work. Any errors due to Contractor's failure to so verify all such grades, elevations, locations, or dimensions must be promptly rectified by Contractor without any increase in the Contract Price. Any design errors or omissions noted by Contractor during this review must be reported promptly to City.
- K. Contractor will establish and maintain all construction grades, lines, levels, and benchmarks, and will be responsible for accuracy and protection of same. This Work must be performed or supervised by a licensed civil engineer or surveyor in the State of Arizona.
- L. Contractor will be responsible for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- M. Contractor must coordinate the activities of all Subcontractors. Contractor will coordinate performance of the Work with City and other contractors or parties involved in the Project. If City performs other work on the Project or at the Site with separate contractors under City's control, Contractor agrees to cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- N. Contractor may not substitute or change any Subcontractor or Supplier without the prior written approval of City. Any substitute or replacement Subcontractor or Supplier will be required to meet the same qualifications and selection criteria and process as the original Subcontractor or Supplier.
- O. Contractor may not change or replace any Key Personnel without an explanation for the change being given to City, and receiving prior written approval of the change from City, which approval will not be unreasonably withheld.



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- P. Subcontractors whose scope of work has a value greater than 15% of the total Contract Price are required to furnish performance and payment bonds to Contractor, unless otherwise approved in writing by City.

### **3. Control of Project Site.**

- A. Throughout all phases of construction, including suspension of Work, Contractor must keep the Site reasonably free from debris, trash, and construction wastes to permit Contractor to perform its construction services efficiently, safely, and without interfering with the use of adjacent land areas. Prior to Final Acceptance of the Work, or a portion of the Work, Contractor will remove all debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the Work, or applicable portions thereof, to permit City to occupy the Project or a portion of the Project for its intended use.
- B. Contractor will take whatever steps, procedures, or means necessary to prevent dust nuisance due to construction operations. The dust control measures must be maintained at all times to the satisfaction of City and in accordance with the requirements of the Maricopa County Bureau of Air Pollution Control Rules and Regulations.
- C. Contractor will maintain Americans with Disabilities Act (ADA) and American National Standards Institute (ANSI) accessibility requirements during construction activities, including without limitation compliance with the 2010 regulations governing implementation of the ADA to the extent applicable. ADA and ANSI accessibility requirements will include, but not be limited to, parking, building access, areas of refuge, and emergency exit paths of travel. Contractor is responsible for the coordination of all work to minimize disruption to residents and the public.
- D. Only materials and equipment used directly in the Work may be brought to and stored on the Site by Contractor. When equipment is no longer required for Work, it must be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor.
- E. Contractor agrees all persons working on the Site will act at all times in the best interest of the Project and will comply with all applicable rules and regulations reasonably set forth by City related to the Site.



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Notwithstanding the foregoing or anything in the Contract Documents to the contrary, City may remove from the Site any individual who City deems, in its reasonable discretion, to be creating a disturbance or causing any problem on the Site.

- F. Contractor will be responsible to City for the acts and omissions of Contractor's employees, Subcontractors, and their agents and employees, and any other person performing any of the Work under a contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs, and expenses resulting from such acts or omissions. City may conduct criminal, drive history, and all other requested background checks of Contractor and/or Subcontractor personnel performing Work or who have access to City's information, data, or facilities in accordance with City's current background check policies. Any officer, employee, or agent that fails a background check must be replaced immediately.
- G. City will have a final authority, based upon security reasons: (i) to determine when security clearance of Contractor's and/or Subcontractor's personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting personnel; and (iii) to determine whether or not any individual or entity may provide Services or perform Work under the Contract. If City objects to any personnel for any reasonable cause, then Contractor must, upon notice from City, remove such individual from the Project.

#### **4. Project Safety.**

- A. The Project and all Work performed in relation thereto is governed by applicable provisions of the federal laws, including but not limited to, the following:
  - 1. Occupational Safety & Health Act of 1970, 29 U.S.C. § 651 et seq.
  - 2. Personal Protective Equipment for General Industry, 29 C.F.R. part 1019.
  - 3. Safety and Health Regulations for Construction, 29 C.F.R. part 1926.
  - 4. Safety Standards for Fall Protection in the Construction Industry, 29 C.F.R. part 1518.





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- B. Contractor is responsible for safety of the job site for employees of Contractor as well as for members of the general public and others who may drive or walk through or be at the Site.
- C. Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to: (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work and stored on-site or off-site; and (iii) all other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and (iv) the owners or tenants of adjacent property and their patrons, employees and invitees.
- D. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- E. Contractor will provide a "competent person" as required by O.S.H.A regulations. The "competent person" must be identified at the Pre-Construction Conference with City advised in writing of any changes.
- F. The "competent person" must make routine daily inspections of the Site and must hold weekly safety meetings with Contractor's personnel, Subcontractors and others as applicable.
- G. Contractor and Subcontractors must comply with all legal and regulatory requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable Legal Requirements.
- H. Contractor will immediately report to Project Manager in writing any safety-related injury, loss, damage, or accident arising from the Work and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.
- I. Contractor's responsibility for safety is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages, or accidents resulting from their performance of the Work.



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- J. As between City and Contractor, Contractor is responsible to City for any and all safety issues relating to the Work on the Project. Contractor will administer and manage a safety program. This will include, but not necessarily be limited to, review of the safety programs of each Subcontractor. Contractor will monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards. Contractor's responsibility for review, monitoring, and coordination of the Subcontractor's safety programs will not extend to direct control over execution of the Subcontractors' safety programs. Notwithstanding Contractor's safety obligations to City, it is agreed and understood that each individual Subcontractor will remain controlling employer responsible for the safety programs and precautions applicable to its own work and the activities of other's work in areas designated to be controlled by such Subcontractor for purposes of workers compensation insurance coverage.
  - K. Contractor is responsible to provide all necessary shoring, bracing, and trench support as is necessary to maintain traffic structures, etc., as required in the Construction Standards and Project Specific Standards. If the stability of adjoining building, walls, roadways, etc., is endangered by Contractor's excavation, shoring, bracing, or under pinning must be provided as necessary to ensure project safety.
5. Quality Control and Quality Assurance Testing.
- A. All construction materials to be used or incorporated in the Project are subject to inspection and testing to assure that the materials installed comply with the requirements of the Contract Documents ("**Quality Control**" or "**QC**") and to verify the accuracy and applicability of the QC testing results ("**Quality Assurance**" or "**QA**"). The City will approve or reject materials based on the QA/QC results and reserves the right to required third party QA/QC testing. Any material rejected by City must be removed immediately and replaced in an acceptable manner to City at no additional cost to City. When QC/QA tests indicate noncompliance with the Contract Documents, retesting will be performed by the same testing laboratory that performed the tests that indicated noncompliance.
  - B. The Contractor will establish, provide, and maintain an effective Quality Control Testing Program ("**QCTP**") and submit a written QCTP to the City





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as a required submittal. The Contractor may not begin work until the QCTP has been reviewed and accepted by the City. Resumes of all personnel that will be associated directly or indirectly with the QCTP must be included.

- C. The QCTP must include, but not be limited to, on-site/field and laboratory testing of all material delivered to the site and any existing materials or conditions pertinent to the project.
- D. The written QCTP must set forth the responsibilities of each Project Team member, supervisory personnel, and each technician assigned to this project. Substitutions or replacement of personnel require prior written approval by the City. All personnel must be proficient within their assigned duties and possess certification(s) commensurate with their position and responsibilities. The minimum certification(s) for each technician is NICET Level II, Arizona Technical Testing Institute, American Concrete Institute, or other nationally recognized program applicable to the project and approved by the City. The written QCTP must include a description of the required field and construction materials laboratory tests, including required frequencies that meet the minimums established herein.
- E. The Contractor must develop its own program or procure the services of a consultant. In either case, the party performing the tests must be currently certified by the National Bureau of Standards in the National Voluntary Laboratory Accreditation Program (NVLAP) for construction services or the AASHTO Accreditation Plan (AAP) for Soils, Asphalt, and Concrete. The Contractor must provide all support necessary to perform QC and QA testing and sampling (i.e. shoring for testing trench backfill, backhoes, motor graders, loaders, etc. to facilitate testing and sampling). The City will perform the QA testing.
- F. The Contractor must establish a system to record and report all material test results. The daily test reports must include, but not be limited to:
  - 1. Test designation
  - 2. Date of test
  - 3. Name of tester
  - 4. Location of test/sample (station and offset)
  - 5. Product suppliers and product codes (as applicable)
  - 6. Depth/elevation of test/sample
  - 7. Test result
  - 8. Control requirement(s)



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9. Cause of rejection (if applicable)
  10. Results of retests (if applicable)
  11. Remedial action (if applicable)
- G. The Contractor will submit test results to the City as soon as they are available (daily) by emailing them to the Project Manager at his/her official City email address.
- H. The Contractor will also submit a weekly report to the City summarizing the testing and construction activities completed by emailing the report to the Project Manager. All weekly reports must be submitted simultaneously to the Contractor and the City. The report must include individual summary sheets for each utility line, structure, and portion of the pavement section. Cores must be numbered sequentially throughout the Project. Re-cores must reference the original core by number and contain the averaged values for thickness and density. Total pavement thickness must be reported. Vertical location of tests for underground utilities must indicate the depth of the excavation at the location of the test (i.e., cut to flow line [if applicable], depth to bottom or top of pipe, etc.). Density tests must be numbered sequentially. If the minimum number of tests has not been performed per the written QCTP, this must be stated in the weekly summary report with an explanation of the circumstances.
- I. The City will maintain a copy of the project test results and weekly reports in the project file. In cases where quality control activities do not comply with the Contract Documents, the City may:
1. Order the Contractor to replace ineffective or unqualified quality control personnel.
  2. Order the Contractor to stop operations until appropriate corrective action is taken.
- J. Although minimum testing requirements are specified herein, the Contractor bears full responsibility for the quality of the materials and their installation and may elect to perform additional testing beyond the requirements set forth herein to ensure compliance.
- K. The quality control requirements contained in this Section are in addition to and separate from quality assurance testing, which will be performed by the City or its representative. If the QA test results are not in agreement with the QC test results, the Contractor will have the option to retain a third party consultant for referee tests. The third party consultant must meet the same requirements as the consultant performing the



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Quality Control Testing. The results of the third party shall be binding. All cost incurred by the referee testing will be the Contractor's expense. If the Contractor elects not to retain a third party for referee testing, the City test results shall prevail.

### **6. Trade Names and Substitutions.**

- A. Substitutions prior to bid will only be considered if in compliance with Arizona Revised Statute §34-104.
- B. Upon written request, substitutions or alternates to equipment, materials, patented processes by manufacturer, trade name, make, or catalog number may be permitted, unless indicated that no substitutes or alternates may be permitted, subject to the following:
  - 1. The Contractor must certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
  - 2. The Contractor must describe any required changes in the Drawings and Specifications to adapt the design to the proposed substitution.
  - 3. The Contractor must provide an itemized estimate of all costs and credits that will result directly or indirectly from the acceptance of the substitution including cost of design, license fees, royalties, and testing.
  - 4. Substitutions will only be considered if they do not extend Contract Time.
- C. Contractor, if requested by City, must submit samples or any additional information that may be necessary to evaluate the acceptability of the substitution.
- D. City will make the final decision and will notify Contractor in writing as to whether the substitution has been accepted or rejected.
- E. If City does not respond within fifteen (15) working days, the request for substitution will be considered rejected and Contractor must continue to perform the Work in accordance with the Contract Documents.

### **7. Shop Drawings.**



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- A. Contractor must prepare and submit Shop Drawings for all items for which Shop Drawings are required by the Contract Documents. Shop Drawings must show details of all work to insure proper installation of the Work using those materials and equipment specified under the approved Drawings and Specifications.
- B. Shop Drawings must be numbered consecutively for each specification section and must accurately and distinctly present the following:
  - 1. All working and erection dimensions.
  - 2. Arrangements and sectional views.
  - 3. Necessary details, including complete information for making connections between work under this agreement and work under other Contracts.
  - 4. Kinds of materials and finishes.
  - 5. Parts list and description thereof.
- C. Each Drawing or page must include:
  - 1. Project Name, City Project Number and descriptions.
  - 2. Submittal date and space for revision dates.
  - 3. Identification of equipment, product or material.
  - 4. Name of Contractor and Subcontractor.
  - 5. Name of Supplier and Manufacturer.
  - 6. Relation to adjacent structure of material.
  - 7. Physical dimensions clearly identified.
  - 8. ASTM and Federal Specifications references.
  - 9. Identification of and justification for deviations from the Contract Documents.
  - 10. Contractor's stamp, initialed or signed, dated and certifying the review of submittal, certification of field measurements and compliance with Contract.
  - 11. Location at which the equipment or materials are to be installed. Location means both physical location and location relative to other connected or attached material. City will return unchecked any submittal, which does not contain complete data on the work and full information on related matters.
- D. Stock or standard drawings will not be accepted for review unless full identification and supplementary information is shown thereon in ink or typewritten form.



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- E. Contractor must schedule, prepare, and submit all shop drawings in accordance with a time-table that will allow its suppliers and manufacturers sufficient time to fabricate, manufacture, inspect, test, and deliver their respective products to the project site in a timely manner so as to not delay the complete performance of the Work.
  - F. If the Shop Drawings show departures from the Contract Documents requirements, Contractor will make specific mention thereof in the letter of transmittal; otherwise review of such submittals by City will not constitute review of the departure. Review of the drawings will constitute review of the specific subject matter for which the drawings were submitted and not of any other structure, material, equipment, or apparatus shown on the drawings.
  - G. The review of Shop Drawings will be general and not relieve Contractor of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract Documents. No construction called for by Shop Drawings may be initiated until such drawings have been reviewed and approved by City.
  - H. The City will provide a procedure for Shop Drawings submission and review.
  - I. Contractor will be responsible for all extra costs incurred by City caused by Contractor's failure to comply with the procedure outline above.
8. Long Lead Time Items. Contractor will submit Shop Drawings, as required by the Project Manager, on all long lead items to be furnished and installed as part of the Project. Unless otherwise set forth in the Project Schedule, shop drawings for long lead items will be submitted within ten (10) days after execution of this agreement. In addition, Contractor will order all long lead items to be furnished and installed as part of this Project within (3) days after receiving approved Shop Drawings. For all long lead times for which shop drawings are not required, Contractor will order said long lead items within fifteen (15) days after execution of this agreement. Within two (2) days after ordering long lead items, Contractor will supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.
9. Construction Water. If Contractor uses water from City's water system for construction water, Contractor must obtain a fire hydrant meter from the appropriate water service provider, and all construction water must be obtained through the hydrant meter. Contractor will pay all fees related to the hydrant



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meter and all water bills for construction water. All cost for meters and construction water must be included in the Contract Price.

### 10. Project Record Documents.

- A. During the construction period, Contractor must maintain at the jobsite a full-size set of prints of the Drawings and Shop Drawings, indicating the actual installation, where the installation varies from the original Construction Documents (the "**Project Record Drawings**"). Contractor will give particular attention to information on elements that will be concealed, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
  - 1. Dimensional changes to the Drawings.
  - 2. Revisions to details shown on Drawings.
  - 3. Locations and depths of underground utilities.
  - 4. Revisions to routing of piping and conduits.
  - 5. Actual equipment locations.
  - 6. Changes made by Change Order.
  - 7. Details not on original Contract Drawings.
- B. Contractor must mark completely and accurately Project Record Drawings with red erasable colored pencil.
- C. Contractor will note Request for Information (RFI) Numbers and Change Order numbers, etc., as required to identify the source of the change to the Construction Documents.
- D. Contractor will submit Project Record Drawing sets and Shop Drawings to City or its representative for review and comment.
- E. Upon receipt of the reviewed Project Record Drawings from City, Contractor must correct any deficiencies and/or omissions to the drawings and submit the final original of the Project Record Drawings to the Project Manager prior to Final Acceptance and as a condition of Final Acceptance.
- F. Project Manager will review the Project Record Drawings monthly prior to the date established for the Payment Request and will be the sole judge of acceptance of these drawings.

### 11. Warranty and Correction of Defective Work.

- A. Contractor Duties





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1. Contractor warrants to City that the construction of the Work will be of good and workmanlike quality and completed in strict conformance with all Legal Regulations, the Drawings and Specifications, and all other terms and conditions of the Contract Documents. All materials and equipment furnished as part of the construction, will be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents, and free of defects in materials and workmanship.
2. The date of Substantial Completion will be the beginning of the Warranty period, irrespective of early completion by some Subcontractors of their work. Contractor will furnish extended warranties for facilities placed in service before Substantial Completion so that the warranty period expires no earlier than one year beyond Substantial Completion, except as otherwise required in the Contract Documents.
3. In addition, unless otherwise specified in the Contract Documents, Contractor and Subcontractors must provide to City all of the following written warranties that apply to the Work, in a form acceptable to City.
  - a. General Warranty – One (1) year
  - b. Mechanical Contractor – Two (2) years
  - c. Plumbing Contractor – Two (2) years
  - d. Electrical Contractor – Two (2) years
  - e. Roofing Contractor – Two (2) years
  - f. Roofing Manufacturer – Ten (10) years
  - g. Caulking – One (1) year
  - h. Steel Joists, Certificate of Manufacture
  - i. Exterior Metal Wall System – Five (5) years
  - j. Painting – One (1) year
  - k. Termite – Five (5) years
  - l. Sheet Metal: Zinc coating thickness on hot-dipped galvanized
  - m. Metals- One (1) year
  - n. Acoustical Tile – Five (5) years
  - o. Resilient Floor Covering – One (1) year
4. Nothing in the warranties contained in the Contract Documents are intended to limit any manufacturer's warranty which provides City



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with greater warranty rights than set forth in this Section or the Contract Documents. Contractor will provide City with all manufacturers' warranties prior to Final Acceptance.

5. Contractor agrees that it is responsible to manage and administer the correction of any Work that is not in conformance with the Contract Documents during the warranty periods, or during any longer periods to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by City, will not constitute acceptance of Work not in accordance with the Contract Documents.
6. When notified of a warranty issue, Contractor must respond in writing within 48-hours and will perform warranty work as soon as material for said repairs are available (as judged solely by City), and in any event Contractor must take immediate steps to commence and complete correction of nonconforming Work no later than the time period set forth in City's written notification in accordance with the Construction Standards. This includes the correction, removal, or replacement of the nonconforming Work, and any damage caused to other parts of the Work affected by the nonconforming Work. If defects develop which are determined by City to be an emergency, City will notify Contractor via the most expeditious means regarding the nature and condition of the defects. In turn, Contractor must immediately correct the defect or the emergency condition in accordance with Construction Standards.
7. The time periods referenced in this Section apply only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies that City may have regarding Contractor's other obligations under the Contract Documents.
8. Without limiting the foregoing or anything in this agreement to the contrary, Contractor must obtain and provide to City all warranties for any portion of the Project offered by the manufacturer, installer, or provider thereof. City and the user of the facility will have the right to the full value and benefit of all such warranties. Contractor will ensure all such warranties are fully transferrable.





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9. Contractor's warranty excludes damages or defects caused by abuse, alterations to the Work not executed by or through Contractor, improper or insufficient maintenance, improper operation, normal wear and tear, or normal usage.

### B. City's Performance of Contract's Work

1. During construction of the Project, if Contractor fails to comply with a request of City to perform required work, or is unable to comply with said request, and it is necessary for City to do work that is normally Contractor's responsibility, City will bill Contractor for the work performed. Each incident requiring work by City will be covered by a separate billing from City to Contractor.
2. The amount of each billing for City performed work will be either \$250 or the actual accumulated charges for employees' time, materials, and equipment, whichever is greater. Employees' time will be billed at each individual's hourly rate plus the applicable City overhead rate. Any materials used will be billed at cost. Equipment rates will be based on the most recent schedule of equipment rental rates for force account work, applicable under the Contract Documents.
3. Contractor will pay City for the amount billed for City-performed work, or at City's option, the amounts billed may be deducted from any payments due to Contractor from City.

## 12. Contract Time.

- A. The "**Contract Time**" is as set forth in the Project Schedule. The Contract Time begins with the Notice to Proceed ("**NTP**") and ends with Final Acceptance.
- B. Beginning on the date of the NTP, Contractor must begin to fulfill Contractor's obligations under the Contract Documents. Contractor's obligations include providing City and other agencies with any submittals required by the Project Specific Standards. Contractor must submit all such required submittals before any physical construction work commences on the Site.



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- C. Contractor agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Completion within the Contract Time.
- D. Time is of the essence of this agreement, for the Project, for the Work, and for each phase and/or designated milestone thereof.

### 13. Substantial Completion.

- A. Substantial Completion must be achieved not later than the Substantial Completion Date set forth in the Project Schedule.
- B. When Contractor considers that the Work, phase, or a portion thereof that City agrees to accept separately, is substantially complete, Contractor will prepare and submit to the Project Manager a comprehensive **"Punch List"** of items to be completed or corrected prior to Final Acceptance and Final Payment. Failure to include an item on such Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.
- C. Upon receipt of Contractor's Punch List, Project Manager will make an inspection to determine whether the Work, or designated portion thereof, is substantially complete. Project Manager may, at Project Manager's sole option, be assisted in such inspection by the Design Professional for the Project. If the inspection by the Project Manager discloses any item, whether or not included on Contractor's Punch List, which is not sufficiently completed in accordance with the Contract Documents so that City can occupy or utilize the Work, phase, or designated portion thereof, for its intended use, Contractor must complete or correct such item upon notification by Project Manager before issuance of the Certificate of Substantial Completion. In such case, Contractor must submit a request for another inspection by Project Manager to determine Substantial Completion.
- D. The Project Manager will not issue a Certificate of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for use by City for its intended purpose, including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories, and similar elements are installed in the



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proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; utilities and systems connected and functioning; site work complete; permanent heating, ventilation, air condition, vertical transportation, and other systems properly operating with proper controls; lighting and electrical systems installed, operable, and controlled; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion. A minor amount of Work, as determined by and at the discretion of the Project Manager, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustment of controls or sound systems, or completion or correction of minor exterior work that cannot be completed as a result of weather conditions, will not delay determination of Substantial Completion. If prior written approval is obtained from City for purposes of Substantial Completion, specified areas of the entire Work or Project may be individually certified as Substantially Complete. In no event may Substantial Completion be deemed to have occurred unless and until: (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities (as applicable) and (ii) all terms and Work required under this agreement have been fulfilled by Contractor and same approved and accepted by City, subject only to the Punch List items.

#### **14. Final Completion and Final Acceptance.**

- A. Final Completion will be obtained within the time period set forth in the Project Schedule.
- B. Unless otherwise expressly agreed to in writing by City, Final Completion must be obtained by no later than 30 calendar days after the date of Substantial Completion.
- C. Failure to timely obtain Final Completion will be a material breach of the Contract.
- D. Upon receipt of written notice that the Work is ready for final inspection and acceptance, City and Contractor will jointly inspect to verify that the remaining items of Work have been completed. There will be no partial acceptance. Final Acceptance will not be issued and Final Completion will



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not occur until all items of work, including Punch List items, have been completed to City's satisfaction as reflected in the written Final Acceptance.

- E. If requested by City, Contractor may complete and turn over to City the Project on a phased basis; each phase having a separate inspection by the Project Manager, a Punch List generated, and then an inspection by City with final approval and acceptance.
- F. Final Payment is not due or owing, and will not be paid by City, until Final Completion is obtained.
- G. Permitting Contractor to continue and finish the Work or any part of it after the time fixed for its completion (whether milestone, phase, Substantial Completion or Final Completion) or after the date to which the time fixed for any completion may have been extended, does not operate as a waiver by City of any rights under the Contract Documents, law, or equity. Furthermore, the timely completion of the Work being of the utmost importance under this agreement, notwithstanding the existence of any disputes between the parties, Contractor will continue to prosecute the Work, including any Change Order, in a diligent and timely manner and not stop, slow down, or impede by action or inaction the progress of the Work, unless City suspends the agreement or Contractor's performance, so long as City makes timely payment to Contractor.

### **15. Contract Price.**

- A. In exchange for Contractor's full, timely, and acceptable performance and construction of the Work under the Contract Documents, and subject to all of the terms of this agreement, City will pay Contractor in accordance with the Schedule of Values. Costs which would cause the Contract Price to be exceeded will be paid by Contractor without reimbursement from City, unless otherwise agreed to in writing by the City as part of an approved Change Order.
- B. The Contractor guarantees to complete the Work within the Contract Price or the Contractor alone will pay the difference between the actual cost and the Contract Price.
- C. The Contract Price is all-inclusive and specifically includes all fees, costs, insurance and bond premiums, and taxes necessary to fully, properly, and timely perform and construct the Work.



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- D. For any portion of the Work which, either through this agreement, Change Order, or otherwise, is performed and paid for on a cost basis or time-and-materials basis, the costs which may be reimbursed to Contractor and/or chargeable against the Contract Price will be determined as set forth herein.
- E. Any savings realized during construction may be incorporated into the construction of the Project to fund additional scope items or will be returned to the City upon the City's request.

### **16. Payment; Generally.**

- A. Payment for the Work will be made in accordance with MAG Standard Specification § 109 as amended below.
  - 1. In MAG Standard Specifications Section 109.7 (A), replace the first paragraph of the subsection with the following: City will make monthly progress payments during the course of the contract. The payments (estimates of work completed) will be prepared by Contractor on forms provided by City, and approved by Project Manager. The monthly payment cycle will start with the date of the Notice to Proceed. City may process payments more frequently if requested by Contractor and agreed to in writing by City. The payment process functions as follows: Prior to the monthly payment cycle date, Contractor will send a Contractor Payment Request Form to Project Manager. The Project Team will review the Contractor Payment Request Form and agree upon any necessary adjustments. Contractor must certify the final Contractor Payment Request Form by signing and returning to the Project Manager. When approved by the Project Manager, the progress payment will be processed for payment of any approved amounts within fourteen (14) days (except final payments).
  - 2. Payments will be made pursuant to A.R.S. § 34-609.
  - 3. When construction of the Project is fifty percent (50%) completed, Contractor may request payment of one-half of the retention pursuant to A.R.S. § 34-609(B)(3), subject to all of City's rights to withhold or offset payments, and/or other rights of City, under the contract.



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4. City reserves the right under A.R.S. § 34-609(B)(3) to reinstate the ten percent (10%) retention if City determines that satisfactory progress is not being made.
5. The second, third, and fourth paragraphs of MAG Standard Specification § 109.7 will remain as written.

### **17. Payment Upon Substantial Completion.**

- A. No later than fourteen (14) calendar days after Substantial Completion, City will pay to Contractor all sums due under the contract, except remaining retention; an amount equal to the liquidated damages, if any, assessable under the agreement; and 150% of the cost to complete all Punch List items as estimated by Project Manager.
- B. No further payments will be made to Contractor until Final Completion.

### **18. Final Payment.**

- A. Subject to all of City's rights to withhold or offset payment, and other rights under this agreement, Final Payment including remaining retainage will be paid only after: (i) the Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by City; (ii) necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, and complete "as-built" drawings (including the Building Information Model, if required by the Contract Documents), plans and specifications have been delivered to City; (iii) full and unconditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to City; (iv) all conditions and requirements imposed by City or any financing entity for the corresponding disbursement have been met; and (v) Contractor delivers to City a written request for Final Payment.
- B. Contractor must also submit a signed copy of Contractor's Settlement of Claims Affidavit prior to Final Payment.
- C. In addition, if required under the Project Specific Standards, Contractor must compile a complete equipment list and maintenance manual to be submitted to City as a precondition to Final Payment. The list must include the following items for all equipment supplied under the Plumbing,





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Electrical, Air Conditioning, Elevator, and other Special Equipment Specifications.

1. Name, Model and Manufacturer.
  2. Complete parts lists and drawings.
  3. Local source of supply for replacement parts along with suppliers' telephone numbers.
  4. Local service organizations serving the equipment and their telephone numbers.
  5. All tags, inspection slips, instruction packages, etc., removed from equipment shall be properly identified as to pieces of equipment from which they were taken.
- D. Contractor must also deliver to City not less than five (5) days prior to Final Completion of the Work one (1) digital (in the format specified by City), and if requested by City, one (1) hard copy, of any applicable maintenance manuals. Each manual must include all manufacturer's operation and maintenance instructions and "as-built" drawings. It must also include all other diagrams and instructions necessary to properly operate and maintain the equipment, the name, address, and telephone number of Contractor and all Subcontractors involved.

### **19. City's Right to Withhold Payment.**

- A. City may withhold payment to such extent as may be necessary in City's opinion to protect City from loss for which Contractor is responsible, including, without limitation, if any of the following conditions exist: defective Work not remedied; third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to City is provided by Contractor; failure of Contractor to make payments properly to Subcontractors or for labor, materials, or equipment; reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price; damage to City or another Contractor; reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; failure to carry out the Work in accordance with the Contract Documents; or Contractor is in default of any of its other obligations under the Contract Documents.



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- B. Payments to Contractor may be made by checks payable jointly to Contractor and its employees, agents, subcontractors and suppliers, or any of them, and when in the sole opinion of City it is advisable, payments may be made directly to Contractor's Subcontractors and any amount so paid shall be deducted from the amounts owed to Contractor under the agreement.
- C. No payment (nor use or occupancy of the Project by City) will be deemed acceptance or approval of the Work or as a waiver of any claims, rights, or remedies of City.
- D. Contractor must make all payments, in the time required, of all labor and materials furnished to Contractor in the course of the Work and must promptly furnish evidence of such payments as City may require. Contractor must pay when due all claims arising out of performance of the Work covered by this agreement for which a lien may be filed either against the real estate or leasehold interest of City, or against payments due from City to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of City, against payment due from City to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this agreement, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) days upon receiving notice or obtaining actual knowledge of the existence of such liens or claim. In addition, Contractor agrees to defend, indemnify, and hold harmless City from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for work performed.

### **20. Extra Work/Changes in the Work.**

- A. City reserves the right to make such changes in the plans and specifications for the Work, as it may deem appropriate and any such change, as set forth in a written Change Order, will be deemed a part of this agreement as if originally incorporated herein.





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- B. In the event City and Contractor cannot agree on the terms of a Change Order, or when circumstances otherwise require, the Project Manager has the authority to direct the Contractor to perform extra work if the work in question is an item not provided for in the agreement as awarded. The Project Manager will have the authority to determine, based upon factual evidence presented by the Contractor, whether the work in question is an item not provided for in the agreement as awarded. If the Project Manager directs the Contractor to perform extra work, the Project Manager's instructions will include a price that the Contractor cannot exceed in charging the City for the extra work. Upon receipt of the Project Manager's directions to perform extra work, the Contractor will promptly proceed with the extra work and document the actual cost thereof. The Contractor is responsible to manage the extra work to ensure that the price limits set by the Project Manager are not exceeded. Contractor will perform the extra work and submit documentation for the actual cost of the extra work to the City. A Change Order will be issued to cover this work.
- C. Contractor is not entitled to payment for extra work unless a written Change Order, in the form prescribed by City, has been executed by City. On all requests for Change Orders, Contractor must specify the increased and/or decreased costs and whether it believes any extensions of time will be necessary to complete its Work as modified by the Change Order. If extra work is performed, a corresponding Change Order must be prepared, approved and processed by City before payment can be made to Contractor.
- D. In general, pricing for Change Orders may not exceed the same mark-up percentages that were in effect when the contract was awarded. The cost or credit to the City resulting from a change in the Work will be determined by actual cost and a percentage fee covering overhead and profit, as set forth in Schedule of Values.
- E. Contractor will have the right to add the fee percentage applicable to the Work under the agreement, or if no such fee has been agreed to by the parties, not more than five percent (5%) to the Subcontractor's prices for authorized extra work performed solely by Subcontractors. Such percentage must include all of Contractor's charges for overhead, profit, administration and supervision. Contractor will have the right to add the fee percentage applicable to Work under the agreement for self-performed extra work, or if no such fee has been agreed to by the parties,



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Contractor's maximum total allowable additions for overhead, profit, administration, and supervision may not exceed ten percent (10%) of actual verifiable labor, materials, and equipment for such self-performed extra work.

- F. Any agreement which modifies the terms of the Contract Documents (including Change Orders) must be approved in writing by the Project Manager. Once properly executed by both parties, these modifications to the Contract Documents will have the same effect as if they had been included in the original agreement.
- G. Accuracy Of Change Order Pricing Information
  - 1. Contractor agrees to submit Change Order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the Contract Documents with respect to pricing of change orders. Contractor agrees that any "buy-out savings" on Change Orders will accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a Subcontractor or a Material Supplier after receiving approval of a Change Order amount that was designated to be paid to a specific Subcontractor or Supplier for the approved Change Order work.
  - 2. Contractor agrees to provide a detailed breakdown of allowable labor and labor burden cost (i.e., base wage rate of applicable classifications of workers, payroll taxes, and insurance and benefits costs). This information will be used to evaluate the potential cost of labor and labor burden related to Change Order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. Information is not intended to establish fixed billing or Change Order pricing labor rates. However, at the time Change Orders are priced, the submitted cost data for labor rates may be used to price Change Order work. The accuracy of any such agreed upon labor rate cost components used to price Change Orders will be subject to later audit. Approved Change Order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.



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3. Contractor agrees that it is responsible for submitting accurate cost and pricing data to City to support its Change Order proposals or other Contract price adjustments under the agreement.
  4. Signature by the contracting parties on a Change Order will constitute full accord and satisfaction between City and Contractor for all costs, damages, and expenses of any nature, including delay, impact or acceleration damages, which may be occasioned by a Change Order.
  5. City, through its designated representative, will have the right to examine, copy, and scan the records of the Contractor, Subcontractor or Sub-Subcontractor (during the Contract period and up to three years after final payment is made on the Contract) to verify the accuracy and appropriateness of the pricing data used to price all Change Order proposals and/or claims. Contractor agrees that if City determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the agreement regarding pricing of Change Orders, an appropriate Contract Price adjustment will be made. Such post-approval Contract Price adjustments will apply to all levels of contractors and/or Subcontractors and to all types of Change Order proposals, specifically including Fixed Price, Unit Price, and Cost Plus Change Orders.
- H. In any emergency affecting the safety of persons and/or property, Contractor will act, at its discretion, to prevent threatened damage, injury, or loss. Any change in the Contract Price and/or Contract Time resulting from emergency work will be determined by Change Order.
- I. If Contractor or a Subcontractor observes Differing Site Conditions at the Site, Contractor must give notice to City promptly before conditions are disturbed (to the extent practicable) and in no event later than fourteen (14) days after first observance of the conditions. City will promptly investigate such conditions and, if City determines that site conditions exist and they materially cause an increase in the cost of, or time required for, performance of any part of the Work, Contractor will be entitled to equitable adjustment in the Contract Price or Project Schedule (and other time requirements), or both. If it is determined by City that the conditions at the Site are such that no change is justified, then City will so notify Contractor in writing, stating the reasons. Claims in opposition to such



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determination must be made within fourteen (14) days after City has given notice of its decision.

- J. In the event of a material change in applicable Legal Requirements or taxes subsequent to the date of this agreement, Contractor may be entitled to a Change Order, in City's discretion, to the extent Contractor can document to the satisfaction of City that such change significantly increases Contractor's actual cost of performance of the Work.
- 21. Liquidated Damages & Offset.** The liquidated damages provisions in MAG § 108.9 apply. City may deduct liquidated damages from any unpaid amounts then or thereafter due Contractor under this agreement. Any liquidated damages not so deducted from any unpaid amounts due Contractor will be payable to City at the demand of City, together with interest from the date of the demand at the highest lawful rate of interest payable by Contractor.
- 22. Mutual Waiver of Consequential Damages Only.**
- A. Contractor and City waive claims against each other for consequential damages arising out of or relating to the agreement. This mutual waiver includes:
    - 1. Damages incurred by City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
    - 2. Damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.
  - B. This mutual waiver is applicable, without limitation, to all consequential damages because of either party's termination of the agreement. Nothing contained in this Section will be deemed to preclude an award of liquidated damages, when applicable, in accordance with this Article.
  - C. Nothing herein will be deemed to constitute a waiver of any other remedy available to City in the event of Contractor's default under this agreement prior to full performance of the Work including, as applicable, specific performance of completion of the Work on behalf of Contractor, the cost and expense of which will be offset against any monies then or thereafter due to Contractor (if any) and otherwise immediately reimbursed to City by Contractor.



## City of Surprise Insurance Requirements

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### Insurance Requirements

The following sets forth the insurance requirements applicable to the Agreement:

1. Contractor and subcontractors must procure and maintain until all of their obligations have been discharged, including any warranty periods under the Agreement, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, or subcontractors.
2. The insurance requirements herein are minimum requirements for the Agreement and in no way limit the indemnity covenants contained in the Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Contractor from liabilities that might arise out of the performance of the work under the Agreement by Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance. Contractor's insurance coverage will be primary insurance with respect to all other available sources. Coverage provided by Contractor may not be limited to the liability assumed under the indemnification provisions of the Agreement.
3. Minimum Scope and Limits of Insurance: Contractor must provide coverage with limits of liability not less than those stated below.

#### 3.1. Commercial General Liability – Occurrence Form

The policy must include bodily injury, property damage, personal injury and broad-form contractual liability coverage.

General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability – Written and Oral	\$1,000,000
Fire Legal Liability	\$ 50,000
Each Occurrence	\$1,000,000

The policy must contain a waiver of subrogation against the City of Surprise, its departments, agencies, boards, commissions, and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of Contractor.

#### 3.2. Business Automobile Liability



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The policy must include bodily injury and property damage coverage for any owned, hired, and/or non-owned vehicles used in the performance of the Agreement.

Combined Single Limit (CSL)

\$1,000,000

The policy must contain a waiver of subrogation against the City, as departments, agencies, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Contractor.

### 3.3. Worker's Compensation and Employers' Liability

Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

The policy must contain a waiver of subrogation against the City of Surprise, its departments, agencies, boards, commissions, and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

### 3.4. Professional Liability (Errors and Omissions Liability)

Each Claim	\$ 500,000
Annual Aggregate	\$1,000,000

- a. In the event that the professional liability insurance required by the Agreement is written on a claims-made basis, Contractor warrants that any retroactive date under the policy will precede the effective date of the Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under the Agreement is completed.
- b. The policy must cover professional misconduct or lack of ordinary skill for all Contractor's key personnel.

4. Additional Insurance Requirements: The policies will include, or be endorsed to include, additional insured language naming the City of Surprise, its departments, agencies, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor.





## City of Surprise Insurance Requirements

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5. Notice of Cancellation: Each insurance policy required by the Agreement must provide the required coverage and may not be suspended, voided, canceled, or reduced in coverage or in limits. Immediate notice must be sent directly to the Procurement Department if insurance is suspended, voided, canceled, or reduced.
6. Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
7. Verification of Coverage: Contractor will furnish the City with a declarations page of the liability insurance policy, as well as any amendments or riders in order to verify contractual insurance requirements are being satisfied.
8. Certificates of Insurance: All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by the Agreement must be in effect at or prior to commencement of work under the Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by the Agreement, or to provide evidence of renewal, is a material breach of contract. The City project/contract number, if applicable, and project description must be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by the Agreement at any time.
9. Subcontractors: Contractors' certificate(s) must include all subcontractors as insureds under its policies or Contractor must furnish to the City separate certificates and endorsements for each subcontractor. All coverage for subcontractors are subject to the minimum requirements identified above.
10. Approval: Any modification or variation from these insurance requirements will be made by the City in writing, whose decision is final. Such action will automatically amend the Agreement without further action of the parties.



## City of Surprise Notice to Proceed

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### Notice to Proceed

DATE:

PROJECT:

Cactus Road Improvements

PROJECT NO.:

COS16-007

TO:

The Contract for construction in the amount of \$ \_\_\_\_\_ was approved.

Per the Invitation for Bid (IFB) for the above referenced Project, the Project will be completed within \_\_\_\_\_ days after the date of this NTP.

A copy of the Contract and purchase order will be provided to you once signatures from the City have been executed. We look forward to working with you on this exciting project. Should you have any further questions, feel free to contact the Project Manager.

The work will be substantially completed within \_\_\_\_\_ consecutive calendar days. The date of substantial completion is \_\_\_\_\_. The project will be completed and ready for final payment by \_\_\_\_\_.

**CITY OF SURPRISE** (Owner)

BY: \_\_\_\_\_

Receipt of the above **NOTICE TO PROCEED** is hereby acknowledged.

BY: \_\_\_\_\_

\_\_\_\_\_  
(Title)

The \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.





## City of Surprise Change Order

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

### Change Order

Contract No. / Project No.:	COS16-007	Change Order Agreement Date:	
Project Description:		Change Order Completion Date:	

**The Above referenced Contract is hereby modified with the execution of this change order.**

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Original contract price	\$
Total of previous change orders	\$
Original contract price plus previous change order(s)	\$
The contract price will be increased/decreased with this change order by	\$
The new contract price including this change order will be	\$

#### **Contract Term Change:**

The date for completion of all work under this change order is _____.
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EXCEPT AS PROVIDED FOR HEREIN, ALL TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT NOT HERETOFORE CHANGED AND/OR MODIFIED REMAIN UNCHANGED AND IN FULL EFFECT.

**Contractor hereby acknowledges receipt and agreement of this contract change order. A signed copy shall be filed with the City of Surprise, Procurement Division.**

_____ Signature	_____ Date	_____ Name and Title	_____ Contractor Name
_____ Address	_____ City	_____ State	_____ Zip Code



## City of Surprise Contractor's Settlement of Claims Affidavit

**Procurement Division**  
16000 N. Civic Center Drive  
Surprise, Arizona 85374  
Phone: (623) 222-3700  
Fax: (623) 222-3701

### **Contractor's Settlement of Claims Affidavit**

STATE OF ARIZONA       )  
  ) SS  
COUNTY OF MARICOPA )

(Name) \_\_\_\_\_, being first duly sworn, deposes and says:

1. I am the (Title) \_\_\_\_\_ of (Name of Contractor) \_\_\_\_\_ (hereinafter "Contractor") and as such, am authorized to make this Affidavit for and on behalf of the Contractor.
2. Contractor entered into an agreement, (contract ref. #) COS16-007 with the City of Surprise on (date) \_\_\_\_\_, under and by the terms of which Contractor agreed to provide all labor, materials and equipment necessary to complete the Work, as such was defined by the contract between the City and the Contractor (hereinafter "the agreement").
3. Contractor has fully and completely performed all work required to be performed by him or her under the terms of the agreement and has fully and completely complied with the terms and conditions of the agreement.
4. Contractor has settled and paid all claims of every nature owing and due to be paid to any person, co-partnership, corporation, association, or otherwise, for labor, materials, supplies, or provisions furnished or used in performance of the agreement; that all just debts, dues and demands incurred by Contractor, or any subcontractor for the Contractor, and all just debts, dues or demands incurred on or for the designated contract account, by any person, in the performance of the agreement, have been settled and paid.

The matters and things herein set forth are within my own knowledge and are true.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Subscribed and sworn to and before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.  
My Commission Expires: